IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTIION

Writ Petition No. 8624 of 2007

Mr.Hussain Ali Shemirani ..Petitioner

vs.

1. Mrs.Coomi Rustam Dalal
and others ..Respondents

Shri P.N.Joshi for petitioner.
Shri D.J.Khambatta with Shri A.S.Doctor i./b
A.S.Dalal and Associates for respondent no.1.

CORAM: S.C.DHARMADHIKARI J.
30th **NOVEMBER, 2007**

P.C.

1. This writ petition is directed against the order below Exh.139 in Reg.Civil Suit No.21 of 2001. The petitioner applied for his impleadment as defendant in that suit. That application is rejected and that is how the instant petition.

2. Shri Joshi appearing for the petitioner would urge that the petitioner is in physical possession of the land in question under an agreement for sale dated 13th August, 1998. There is consideration which is paid under the said agreement to M/s Saga Builders Pvt.Ltd.

There is a power of attorney executed in pursuance of this agreement and that is how the petitioner came to know of the pending suit and approached the Trial Court.

3. The first respondent has resisted the application. The first respondent who is the original plaintiff had filed a suit that it be declared that the power of attorney dated 2nd August, 2003 coupled with the sale deed of 29th September, 1983 are forged and not binding upon them. The copy of the plaint is at Exhibit A which shows that the petitioner is claiming through one M/s Saga builders who are original defendant no.2. This is a suit of 1989. The suit has been directed to be expeditiously heard by this Court. The application, which was made by the present petitioner, was contested in the above terms so also on the ground of enormous delay.

4. I have perused the impugned order. In my view, in the peculiar facts of this case, any larger issue need not be decided in as much as the petitioner is not without any remedy. There

is enough substance in the contention of the original plaintiff that the suit is pending for the last 18 years. The evidence has already been recorded and now Shri Khambatta makes a statement, on instructions, that even the final arguments are over and the matter is kept for judgment.

5. In such circumstances, I find that the discretion exercised by the learned Judge cannot be said to be vitiated by any arbitrariness nor can be termed as capricious so as to warrant interference under Article 227 of the Constitution of India. The application made belatedly has been rejected rightly and I find no reason to take a different view.

6. However, the third party petitioner has enough remedies in law and if he pursues his own remedies observations in the order under challenge shall not in any manner preclude him from raising appropriate pleas and whenever such pleas are raised, the Competent Court to deal with them without being influenced by any observations in the impugned order. The petition is dismissed. Needless to state that the

submission of Shri Joshi with regard to the sale deed, construction and possession being recorded by me does not mean that the same is admitted position. It is pertinent to note that all these contentions are seriously disputed by the plaintiff in the instant suit who is represented by Shri Khambata.

(S.C.DHARMADHIKARI J.)